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## **6 CONSULTATION AND COORDINATION**

### **6.1 Overview**

Extensive coordination has already been accomplished during the initial phases of the study. Primarily, this is done through two separate mechanisms. The first is, the Green River Forum (composed of managers from cities throughout the Green River Basin) has acted as an executive committee. They review and comment on policy actions related to the Ecosystem Restoration Study. Secondly, a technical committee comprised of representatives of Washington State Department of Fish and Wildlife, U.S. Fish and Wildlife Service, King County, Cities of the Green River Valley, the Corps and Muckleshoot Indian Tribe was established for providing oversight on proposed restoration activities. Numerous public meetings were also conducted throughout the project area to provide information on the Study as well as obtain citizen input. In addition, when conducting such actions as the Ecosystem Restoration Study, the Corps is required to coordinate with the U.S. Fish and Wildlife Service under the Fish and Wildlife Coordination Act. Specific reports that provide the Service's opinion on the proposal and

Many federal, state, tribal, and local laws, regulations, and treaties apply to the Green River restoration activities. With this programmatic EIS, it is not possible to define all regulatory requirements at this time. However, the following sections identify the key and potentially applicable regulatory authorities, and the common permit requirements.

In initiating the EIS for the Green River, it is necessary for the Corps of Engineers and King County to comply with a number of environmental and regulatory requirements on several levels. The first requirement is to follow federal NEPA and state SEPA regulations and policies.

To construct a restoration project, various permits may be required from local state and federal agencies. Public hearings may also be required. Some environmental permits are joint permits; an example is the Washington Joint Aquatic Resource Permit for Hydraulic Project Approval, Shoreline Substantial Development Permit, Floodplain Management Permits and/or Critical Areas Ordinances, Section 401 Water Quality Certification, Approval to Allow Temporary Exceedance of Water Quality Standards, and Section 10 and Section 404 Permits from the Corps of Engineers. In-water projects require review by several resource agencies. Restoration work may also require compliance with various construction codes and health and safety and labor laws.

### **6.2 Restoration Site Monitoring**

Monitoring will be conducted to ensure that BMPs and impact mitigation measures are implemented to minimize, avoid, or compensate for environmental impacts. Additionally, monitoring has been defined as a planning component of the restoration plan (see Section 10 of Volume II), and projects that require Section 404 will likely have permit conditions that will

require some degree of monitoring. Site monitoring can be assisted by public stewardship of some restoration projects.

## **6.3 Key Environmental Compliance Laws and Regulations**

### **6.3.1 National Environmental Policy Act (NEPA), 42 USC 4321-4370d; 40 CFR Parts 1500–1508**

The NEPA process includes opportunities for public participation, and it has many other process requirements. Following completion of this programmatic EIS, site-specific projects will still require additional environmental documentation. Section 1 of the EIS describes in more detail the NEPA process for subsequent environmental documents. This programmatic EIS is intended to accomplish partial NEPA compliance. Project-specific NEPA documents will need to be prepared for each proposed restoration project.

In the Notice of Intent, published by the Corps on December 23, 1998, the public was invited to provide written comments on the scope and content of the EIS, ask questions about the EIS, request to be included on the EIS mailing list, and request copies of any documents associated with the EIS. Notice of the scoping meeting was published in the Seattle Times/Post Intelligencer on January 13, 1999 and the South County Journal on January 16, 1999. Additionally, notices of the meeting were sent to approximately 3,200 agencies, organizations, and individuals on the EIS mailing list. The comment period ended February 3, 1999, which was 43 days from initiation on December 23, 1998. The Corps and King County did not receive any written comments during this scoping period.

An open house/scoping meeting was held on January 20, 1999, to provide the public with an early opportunity to engage in discussions regarding the EIS and to provide oral and written comments. Thirty-one people participated in the scoping meeting. The primary issues of concern were identified as:

- Evaluate the increase of erosion and sedimentation along rivers and creeks in the Green/Duwamish River Basin, especially with regard to property loss, contamination of water quality, and damage to salmon spawning grounds.
- Address alteration of wetlands and vegetation in the Green/Duwamish River Valley.
- Address the hazard created by LWD for boat and “floater” recreationists.
- Address the lack of recreational access to the Green/Duwamish River.
- Address environmental impacts.

For the Green/Duwamish Ecosystem Restoration Study a EIS that assess the program, as opposed to site-specific individual projects, has been prepared, it is called “programmatic EIS.” The purposes of preparing a programmatic EIS is to expedite and provide a point of departure for future site-specific projects, and to facilitate the preparation of subsequent project-specific NEPA and SEPA documents through the use of “tiering” or “phasing.”

Utilizing the concepts developed in this programmatic EIS, environmental review of future projects, whether large or small, may adopt this tiering approach. These future projects would focus on site-specific issues and impacts and would incorporate by reference the relevant aspects of the EIS. By utilizing this flexible approach, the future projects in the secondary and tertiary tiers can use the complete range of environmental evaluation provided by the NEPA/SEPA process (i.e., environmental impact statements, supplemental environmental impact statements, environmental assessments with Findings of No Significant Impact, and categorical exclusions). Project-specific NEPA and SEPA documents will be prepared for each project proposed under the selected restoration approach

### **6.3.2 State Environmental Policy Act (SEPA), Ch. 43 RCW**

King County Department of Natural Resources is the lead local agency for SEPA for this project. The County will use this joint NEPA/SEPA EIS to meet programmatic SEPA EIS requirements for the project. As with NEPA, there will be subsequent environmental review to meet SEPA requirements for the specific projects. It is anticipated that a SEPA checklist will be adequate to comply. Preparing this Draft NEPA/SEPA is the first step of this process. As noted, project specific NEPA/SEPA documents will be prepared prior to construction of any projects.

### **6.3.3 Section 401 of the Clean Water Act, Water Quality Certification**

A Water Quality Certification under the CWA Section 401 is required from the State of Washington for activities requiring a federal license or permit which may result in any discharge into the navigable waters. The certification from the state states that the discharge will comply with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the CWA. In order to obtain the required certification, the State of Washington may require a water quality modification

### **6.3.4 Section 404 of the Clean Water Act, Discharge of Dredge or Fill Material**

This permit is required for the discharge of dredged or fill material into water of the United States. Waters of the United States is defined to include wetlands. Site or project specific compliance under Section 404 will occur prior to any construction.

### **6.3.5 State Hydraulic Code (HPA), Washington Department of Fish and Wildlife**

Work that uses, diverts, obstructs, or changes the natural flow or bed of any freshwater or saltwater of the state requires a Hydraulic Project Approval (HPA) from the Washington Department of Fish and Wildlife (WDFW). The statutory authority for this requirement is contained in Chapter 75.20 RCW and Chapter 220-110 WAC.

HPAs may be needed for restoration projects since most would involve some degree of work within the streambed of the Green River and tributaries. WDFW has provided technical support for this program and they are members of the technical committee that is involved with projects selection and design. Continued coordination with WDFW will occur throughout the remainder of the Ecosystem Restoration study

### **6.3.6 Coastal Zone Management Act Compliance**

The Coastal Zone Management Act encourages and assists with the responsible use and protection of the nation's coastal zones. The National Oceanic and Atmospheric Administration (NOAA) oversees the implementation of the act by assisting state and local shoreline agencies to achieve wise use of land and water resources. The Washington State Department of Ecology leads the effort in implementing the act with assistance from each coastal county's planning departments. Providing a copy of the Draft EIS and Draft restoration plan will be the initial coordination effort on this project to Department of Ecology and King County. An evaluation of coastal zone consistency will be done during the project specific permit phase and that determination will be provided to the appropriate agencies.

### **6.3.7 Federal Endangered Species Act**

The Endangered Species Act (ESA) requires federal agencies to conserve endangered and threatened species. Consultations with the federal agencies that govern fish and wildlife are required to ensure that federal actions do not jeopardize listed, proposed, or candidate species or destroy those species' critical habitats. The Corps initiated consultation for this restoration plan with the U.S. Fish and Wildlife Service (USFWS) in March 1999 and with National Marine Fisheries Service (NMFS) in July 1999, and followed up with an updated request for information in January 2000.

Programmatic BAs for chinook salmon, bull trout, and threatened and endangered wildlife and plants, have been prepared for the Green/Duwamish River Basin restoration program under Section 7 of the ESA. Rather than specifically evaluating the 50 projects currently envisioned in the Restoration Plan, the BAs evaluate the *types* of activities that could occur in restoring fish habitat in the basin (e.g., culvert replacement, levee setbacks, channel construction, etc.). This approach will allow the Corps to tier analysis of future restoration projects with similar activities to the programmatic BAs and facilitate Section 7 consultation.

### **6.3.8 Fish and Wildlife Coordination Act**

The Act and amendments require consultation with the USFWS and the fish and wildlife agencies of states where the "waters of any stream or other body of water are proposed or authorized, permitted or licensed to be impounded, diverted...or otherwise controlled or modified" by any agency under a federal permit or license. Consultation is to be undertaken for the purpose of "preventing loss of and damage to wildlife resources."

Continuous coordination with USFWS has been ongoing throughout the study process. During the initial phase of study USFWS provided a Planning Aid letter that was supportive of the restoration program. This summer, USFWS will also provide a Coordination Act Report that will further discuss fish and wildlife issues and recommendations. The USFWS is also a member of the technical committee that is involved in planning of the restoration activities. Their involvement in the committee is expected to continue through the life of the project.

### **6.3.9 National Historic Preservation Act: Section 106**

The Section 106 process of the National Historic Preservation Act is triggered for projects that are federal undertakings, or projects that require a federal permit, license, or approval and are subject to state or local regulation pursuant to approval by a federal agency. Section 106 requires that a federal agency having direct or indirect authority to issue a license authorizing an undertaking shall take into account the effect of the undertaking on historic properties.

The Section 106 process includes research and field investigation in consultation with the Washington State Office of Archaeology and Historic Preservation, the Advisory Council on Historic Preservation, and concerned Tribes and local governments. The process generally includes identifying historic properties that may be affected by the project; gathering information sufficient to evaluate the eligibility of properties found for the National Register; and consulting among agencies and other concerned parties to avoid or mitigate adverse impacts on significant properties. If the properties are of value only for their research potential, and the State Historic Preservation Office approves data recovery as mitigation, then a determination of “no adverse effect” can be achieved. Mitigation for traditional cultural properties or properties judged to be significant for reasons other than research potential may require measures other than data recovery. There is also concern about discovery of archaeological material or human remains during construction or as a later consequence of habitat development.

The Memorandum of Agreement (MOA) in Appendix E sets forth the means by which the Corps will comply with Section 106 of the NHPA and other statutory requirements. An MOA is appropriate for projects when the effects on historic properties cannot be fully determined prior to approval, and when similar kinds of actions are repeated. The MOA addresses such issues as monitoring during construction, treatment of newly discovered historic properties, and a plan to be applied if human remains are inadvertently discovered during construction or long-term habitat development.

### **6.3.9 Environmental Justice – Executive Order 12898**

On February 11, 1994, President Clinton issued Executive Order 12898 (E.O. 12898), Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. This Executive Order requires each federal agency to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. Among other actions required by E.O. 12898, each federal agency is required to identify differential patterns of consumption of natural resources among minority and low-income populations which may be affected by agency actions.

Each federal agency is required by E.O. 12898 to collect, maintain, and analyze data assessing and comparing environmental and human health risks to ensure that their activities do not have the effect of excluding persons from participating in or denying federal benefits on the basis of race, color, or national origin. Agencies are also to use this information to determine whether their activities, along with other public and private actions, have disproportionately high and adverse health or environmental effects on minority populations and low-income populations. E.O. 12898 specifically mandates that federal agencies collect, maintain, and analyze

information on consumption patterns of populations who rely principally on fish and/or wildlife for subsistence.

EPA and the Council on Environmental Quality (CEQ) have emphasized the importance of incorporating environmental justice review in the analyses conducted by federal agencies under NEPA and developing mitigation measures that avoid or minimize disproportionate environmental effects on minority and low-income populations. In turn, EPA has incorporated environmental justice review into EPA's NEPA review under Section 309 of the Clean Air Act, 42 U.S.C. § 7609(a). This EIS is subject to such review.

The Muckleshoot Indian Tribe constitutes a distinct, separate community of Native Americans who rely on Treaty-reserved fish for subsistence, economic, and spiritual purposes. No disproportionate, adverse impacts on human health of the Muckleshoot Tribe or other minority or low-income population, or environmental effects resulting from implementation of the preferred alternative, have been identified.

## **6.4 Other Potentially Applicable Laws and Regulations**

Table 6-1 lists other laws that potentially affect Green River restoration activities. Many of the regulations adopted to implement these laws require permits from federal or state permitting authorities. See Table 6-1 for a description of the applicable regulations of federal, tribal, State of Washington, King County, and the cities within the basin.

## **6.5 Other Area Programs and Plans**

Coordination of Green River restoration projects with other planned restoration activities and programs should also be considered at the project-specific level. Some of these plans are listed in the following section.

### **6.5.1 Environmental Protection Agency – National Estuary Program**

The Program promotes the development and implementation of management directives for pollution control in the Duwamish Estuary, such as the Puget Sound Water Quality Authority Management Plan and Washington Department of Ecology Urban Bay Action Program.

### **6.5.2 Washington Department of Fish and Wildlife**

This agency oversees state fishery policy and management activities and programs, including the State of Washington Wild Salmonid Policy EIS. The Department also issues project HPAs.

### **6.5.3 Washington Department of Natural Resources**

This state agency is responsible for management of state-owned aquatic lands for harbor areas, navigation and commerce, preservation and enhancement of water-dependent uses, public access, and management of wildlife habitat, natural area preserves, and state forest lands.

#### **6.5.4 President's Northwest Forest Plan**

The Record of Decision on Management of Habitat for Late-Successional and Old-Growth Forest Related Species within the Range of the Northern Spotted Owl involves establishing protection buffers and managed areas for threatened species such as the marbled murrelet and spotted owl. The eastern portion of the Green/Duwamish Basin includes land designated as successional and riparian reserves. Permitted development and harvesting on these lands is extremely limited unless it specifically benefits "old growth habitat" (U.S. Department of Agriculture and U.S. Department of the Interior, April 1994).

#### **6.6 Common Restoration and Construction Permits**

As noted above, coordination and review occurs on federal, state, local, and tribal levels, and through the permit process. Table 6-2 presents the typical sequencing of permit and compliance activities. This information will be provided in further detail at the project-specific level. Additional information can be found in the resource guides to commonly required environmental permits available from Ecology.



**Table 6-1. Compliance with Applicable Laws and Regulations**

<b>Law/Regulation</b>	<b>Scope</b>	<b>Responsible Agency</b>	<b>Compliance</b>	<b>Permit</b>
<b>Federal</b>				
National Environmental Policy Act of 1969 (NEPA), 42 USC 4321-4370d; 40 CFR 1500–1508	Disclosure of environmental impacts of proposed project; evaluation of alternatives. Applies to federal actions.	Federal lead agency, EPA	Project-specific NEPA documentation also required	No
Clean Water Act (CWA), 33 USC 1251 et seq.; Section 404 and 301	Regulating discharge of dredge and fill material in waters of the U.S.; protection of wetlands.	Corps, EPA	Project-specific	Yes
Clean Water Act, Sections 401 and 402	Compliance with state water quality standards.	Ecology	Project-specific	Yes
Rivers and Harbors Act of 1899, 33 USC 403, et seq.; Section 10	Prohibits obstruction or alterations of navigable waters. Regulates construction of any structures within navigable waters of the U.S.	Corps	Project-specific	Yes
Endangered Species Act (ESA), 16 USC 1531 et seq.	Continued existence of listed threatened and endangered species.	USFWS, NMFS	Partial compliance with EIS. Project-specific consultation with USFWS & NMFS also required.	No
Coastal Zone Management Act (CZMA), 16 USC 1451 et seq.	Compliance with CZMA for protection of coastal zone; may need certification by state.	NOAA, Ecology	Project-specific; review at state level.	Yes
Fish and Wildlife Coordination Act	Protection of fish and wildlife. Applies to federal actions only. The Act is currently being modified.	USFWS		No
Clean Air Act (CAA), 42 USC 7401 et seq.	Prevention of degradation of air quality.	EPA, Ecology	Project-specific.	No
National Historic Preservation Act (NHPA), 12 USC 470 et seq.	Preservation/protection of historic and prehistoric resources.	State, Tribes	Protect-specific; review at state level.	No

<b>Law/Regulation</b>	<b>Scope</b>	<b>Responsible Agency</b>	<b>Compliance</b>	<b>Permit</b>
Federal Treaties with Treaty Tribes	Reserved hunting and fishing rights to signatory tribes.	Federal	Project-specific; review at federal level.	No.
Archaeological Resources Protection Act, 16 USC 470 et seq.	Secures protection for archaeological resources and sites on public lands and Indian lands.	Federal	Project-specific when public lands involved.	No
Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations	Identification and addressing disproportionately high and adverse human health or environmental effects of programs, policies, on minority and low income populations	Federal	Programmatic and project-specific; NEPA documentation	No
Federal Water Pollution Control Act, 33 USC 1321 et seq.	Sets the basic structure for regulating discharges of pollutants to waters of the United States	Federal, Ecology	Project-specific; point and nonpoint discharge to waters (NPDES)	Yes
Marine Mammal Protection Act, 16 USC 1361 et seq.	Protection for marine mammals and their parts, and products.	Federal	Project-specific	No
Migratory Bird Treaty Act, 16 USC 703 et seq.	Regulates harvest of migratory birds and impact of facilities to migratory birds	Federal	Project-specific	No
<b>State</b>				
State Environmental Policy Act (SEPA), Ch. 43 RCW	Disclosure of environmental impacts of proposed project; evaluation of alternatives.	Lead state/local agency Ecology	Partial compliance if EIS is adopted by the state. Project-specific SEPA documentation also required. Local review.	No
Aquatic Lands, Ch. 79.90 RCW	Navigation and commerce; management of wildlife habitat, natural area preserves.	WDNR	Project-specific use authorization required.	No
Shoreline Management Act	Protection of shoreline/coastal areas and resources. Meets federal requirements under CZMA.	Local government, Ecology	Project-specific	Yes
Growth Management Act	Controls urban development. Protection of sensitive resources.	Local and county government, Ecology	Project-specific. Local jurisdictional review.	No

<b>Law/Regulation</b>	<b>Scope</b>	<b>Responsible Agency</b>	<b>Compliance</b>	<b>Permit</b>
Forest Protective Act	Management of timber adjacent to state waters.	WDNR	Project-specific	Yes
Hydraulic Project Approval, Ch. 75.20 RCW	Protection of aquatic life, beds, and flow of state waters.	WDFW	Project-specific	Yes
Washington Water Pollution Control Act	Governs discharges to state waters.	Ecology	Project-specific	Yes
<b>Local<sup>1</sup></b>				
Zoning Ordinances	Restricts types of development within designated zones.	Local government	Project-specific	No
Clearing and Grading Ordinances	Regulates clearing and grading activities.	Local government	Project-specific	Yes
Noise/Nuisance Ordinances	Restricts noise and nuisance levels.	Local governments	Project-specific	No

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<sup>1</sup> Some of these permits may not be applicable to all projects.

**Table 6-2. Sequencing of Permit and Compliance Activities**

<b>Activity</b>	<b>Applicability</b>	<b>Agency</b>	<b>Duration</b>
1. Negotiation with property owner	Following appropriate site selection	Local jurisdiction	Indefinite
2. Pre-meetings with local governments	Following appropriate site selection	Planning/Zoning and Shoreline offices	Indefinite
3. Local zoning and environmental review	Upon submission of zoning application and SEPA checklist	King County Planning/Zoning, Ecology	1 to 12 months
4. Shoreline substantial development application	If project located adjacent to state waters	Local/Ecology	30 days
4a. NEPA Environmental Assessment for individual projects	Project-specific NEPA compliance	Corps	4 months
4b. SEPA checklist (adopt NEPA EA for SEPA compliance)	Project-specific SEPA compliance	King County Department of Natural Resources	4 months
5. Grading and excavation permit application; local approval; sensitive and/or critical area ordinance	Disturbance of 50 or more cubic yards of soil or clearance of vegetation	King County and local municipalities	1 to 2 months
6. Pre-meetings with state and federal agencies	Following site selection and local pre-meetings	Various state/federal	Indefinite
7. Aquatic access application	If project involves state-owned aquatic lands	WDNR	Indefinite
8. Hydraulic project approval	Effect or impact within ordinary high water mark of state waters	WDFW	1 to 2 months
9. NPDES application	Potential to discharge storm or surface runoff; at least 5 acres of disturbance	Ecology	1 to 3 months

<b>Activity</b>	<b>Applicability</b>	<b>Agency</b>	<b>Duration</b>
10. Short-term modification of water quality permit application	Potential to affect quality of state waters	Ecology	1 to 2 months
11. Forest Practices Act Permit application	Timber removal near state waters	WDNR	1 month
12. Corps Section 404 Permit	Dredge or fill in U.S. waters	Corps	Will depend on scope of work
13. Endangered Species Act coordination	Impacts on federally endangered species	NMFS, USFWS	Individual: 6 to 12 months Reevaluation of species presence prior to project implementation
14. Corps Section 10 Permit	Structures or excavation in U.S. waters	Corps	Will depend on scope of work
15. 401 Water Quality Certification	With Section 404/10 Permits	EPA	3 to 12 months
16. Tribal review	Potential to impact treaty rights	Tribe	Indefinite